



On August 8, 1993, while working as a forklift driver, claimant, in stepping off the forklift, twisted his left knee. Claimant underwent treatment with Dr. Lesko including surgery for a torn meniscus. Claimant continued to experience problems with his left knee through January, 1994. At that time Dr. Lesko recommended additional treatment to which claimant objected. Claimant, in requesting a second opinion, was referred to Dr. Bernard Poole, who supported Dr. Lesko's recommendations for treatment. After undergoing cortisone injections in January 1994, claimant was released from Dr. Poole's care.

In May 1994, claimant attempted to contact the adjuster for the insurance company in order to settle this matter. Claimant testified that at that time he was feeling fine.

In June 1994, while on vacation, claimant stepped from a motel door twisting his knee and re-injuring his meniscus. While claimant contends that this is a direct and probable result of the original injury occurring in August 1993, medical records of Dr. Anthony Pollock who saw claimant on June 7, 1994, do not support claimant's position. Dr. Pollock's report indicated claimant suffered a twisting injury of his knee in June 1994, and suffered a further tear of the medial meniscus. In performing surgery on the knee he discovered additional degenerative changes in the medial foraminal condyle. Dr. Pollock felt that the injury to the meniscus and the degenerative problems would not have occurred but for the previous meniscal injury, indicating that claimant suffered a second injury in June 1994.

In proceedings under the Workers Compensation Act the burden is on the claimant to establish claimant's right to an award by proving the various conditions on which the claimant's rights depend. K.S.A. 44-501.

Burden of proof is upon the claimant to establish his right to an award for compensation by proving all the various conditions on which his right to a recovery depends. This must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

The medical evidence from Dr. Pollock, rather than supporting claimant's contention, indicates that claimant suffered a separate and distinct injury in June 1994, which did not arise out of and in the course of his employment. The Appeals Board finds, that for preliminary hearing purposes, claimant has failed in his burden of proving a relationship between the June 1994, incident and the original injury claimant suffered at work on August 8, 1993.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes of August 11, 1994, is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of December, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

- c: James B. Zongker, Attorney at Law, Wichita, KS  
Eric Kuhn, Attorney at Law, Wichita, KS  
Joel P. Hesse, Attorney at Law, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
George Gomez, Director